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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/533,232 | 11/22/2005 | Bret Cooper | 1392/10/19 PCT/US | 2354 |
| 25297 | 7590 | 04/23/2007 | EXAMINER | |
| JENKINS, WILSON, TAYLOR & HUNT, P. A. 3100 TOWER BLVD SUITE 1200 DURHAM, NC 27707 | | | PAGE, BRENT T | |
| | | ART UNIT | | PAPER NUMBER |
| | | | | 1638 |
| SHORTENED STATUTORY PERIOD OF RESPONSE | | MAIL DATE | DELIVERY MODE | |
| 3 MONTHS | | 04/23/2007 | PAPER | |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/533,232 | COOPER, BRET | |
| | Examiner Brent Page | Art Unit 1638 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 January 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) 1-53, 56 and 58 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 54, 55 and 57 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 March 2006 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 09/14/2006.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: IDS 11/20/2006.

DETAILED ACTION

Applicant's election without traverse of SEQ ID NO: 209 and Group CCXCVII in the reply filed on 01/23/2007 is acknowledged.

Applicant further pointed out that claims 54-56 read on the elected embodiment. This is correct in part. Claims 54, 55 and 57 are the claims that relate to the elected subject matter and are the claims that are examined upon the merits in the following office action.

The Restriction requirement is therefore made FINAL.

Claims should be amended to remove nonelected inventions.

Specification

The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. There are 3 hyperlinks in paragraphs 193, 264 and 1505, respectively. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 54, 55, and 57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 54 recites a number of SEQ ID NOs inside parentheses. It is unclear whether these are intended to be a claim limitation or not. It is suggested that the parentheses be deleted.

Claim 54 is missing an expression step and is an incomplete method claim. Without an expression step, the method does not result in "modulating proliferation".

Claim 54 recites "wherein the polypeptide binds in a yeast two hybrid assay to a fragment...". It is unclear whether or not the binding ability determines whether or not the protein is proliferation-related. If this is the case, the determination of function must be included in the claim language. New Matter must be avoided.

Claim 55 recites "wherein expression". "expression" lacks antecedence, there is no expression step in claim 54.

Claim 55 recites "results in an enhancement". The claim lacks a comparative basis and is therefore indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an

application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 54, 55, and 57 are rejected under 35 U.S.C. 102(e) as being anticipated by Edgerton et al (PG PUB US20030233670, effectively filed 12/04/2001).

The claims are drawn to a method for modulating proliferation of a plant cell comprising introducing into the plant cell an expression cassette comprising SEQ ID NO:209, wherein the expression of the resulting polypeptide results in an enhancement of a rate or extent of proliferation of the cell.

Edgerton et al teach SEQ ID NO:44 which is 100% identical to SEQ ID NO:209 in an expression vector to increase plant yield via changing the cell cycle (see claim 17 part j, for example).

No claims are free of the prior art.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent Page whose telephone number is (571)-272-5914. The examiner can normally be reached on Monday-Friday 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571)-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brent T Page

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GROUP 1638



for Phuong Bui